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Security Council

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Letter dated 28 October 2009 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit the attached letter dated 29 September 2009 from Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia (see annex).

President Robinson seeks the extension of the terms of office of two ad litem judges, Judge Kimberly Prost (Canada) and Judge Ole Bjørn Støle (Norway), until the end of March 2010, in order that they may complete the judgment in the case of the *Prosecutor v. Popović et al.* According to Security Council resolution 1837 (2008), the current terms of office of Judge Prost and Judge Støle will expire on 31 December 2009.

The statute of the International Tribunal does not provide for the extension of the terms of office of the ad litem judges. In the absence of such a provision, the approval of the Security Council, as the parent organ of the International Tribunal, and of the General Assembly, as the organ that elects its judges, is necessary.

I should be grateful if you would bring the letter from President Robinson to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex*

I have the honour to refer to the 116th plenary meeting of the fifty-ninth session of the General Assembly, of 24 August 2005, at which 27 ad litem judges of the International Criminal Tribunal for the Former Yugoslavia were elected for a mandate of four years. I also refer to resolution 1837 (2008) and resolution 1877 (2009), which were adopted by the Security Council on 29 September 2008 and 7 July 2009, respectively.

By the present letter I wish to advise that, due to unforeseen factors related to the scale and complexity of the case of *Popović et al.*, the delivery of the judgment is delayed and will not be rendered until the end of March 2010. The terms of office of the two ad litem judges serving on the *Popović et al.* case, Judge Kimberly Prost (Canada) and Judge Ole Bjørn Støle (Norway), will expire on 31 December 2009. Accordingly, an extension of their mandates will be required so that they may complete their assignment to this case and so that they can continue to serve beyond the cumulative period of service provided for under article 13 ter, paragraph 2, of the statute of the Tribunal.

The extension of the mandates of Judge Kimberly Prost and Judge Ole Bjørn Støle until March 2010, coupled with the appointment of ad litem Judge Prisca Matimba Nyambe (Zambia) effective 1 December 2009 in order to commence the *Tolimir* trial, will put the Tribunal over its statutory maximum of 12 ad litem judges by one ad litem judge for four months. I note, in this regard, that resolution 1877 (2009) authorized you to exceed the maximum of 12 ad litem judges, to a maximum of 13 at any one time, but only until 31 December 2009.

Accordingly, it has become necessary to seek an extension of the terms of Security Council resolutions 1800 (2008) and 1877 (2009) as the International Tribunal will continue to have a total number of ad litem judges over the statutory limit until the delivery of the judgment in the *Popović et al.* case.

While it is regrettable that the anticipated date for delivery of the judgment in the *Popović et al.* case has not been met, estimation of the length of a trial, including the delivery of a judgment, is not an easy matter. The *Popović et al.* case contains multiple counts, including charges of genocide and crimes against humanity that were allegedly committed at 20 different crime sites in the former United Nations safe haven of Srebrenica; the case also has seven accused and deals with a large number of military forces and over 7,000 alleged victims. The case has made steady progress since its commencement and suffered no major delays. However, at the very end of the case, it was necessary to re-open the Prosecution's case due to recently discovered evidence and this caused an extension of the proceedings.

I would be grateful if this matter could be brought to the attention of the Security Council as a matter of urgency.

(*Signed*) Patrick **Robinson**
President

* Also circulated in A/64/510.